

## DETAILED ACTION

### *Information Disclosure Statement*

The information disclosure statement filed on 08/13/2009 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 for the following reasons:

37 CFR 1.97(c) states:

“An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, provided that the information disclosure statement is filed **before the mailing date of any of a final action under § 1.113**, a notice of allowance under § 1.311, **or an action that otherwise closes prosecution in the application**, and it is accompanied by one of:

- (1) The statement specified in paragraph (e) of this section; or
- (2) The fee set forth in § 1.17(p)”. (emphasis added).

37 CFR 1.114(b) further states:

“(b) **Prosecution in an application is** closed as used in this section **means that the application is under appeal, or that the last Office action is a final action** (§1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application”.

Accordingly, since both a final action has been mailed and the application is under appeal, the application meets the conditions of "prosecution is closed", and the prosecution of the present application is closed.

Because the prosecution is closed, the IDS was not timely filed in accordance with 37 CFR 1.97(c).

If applicant wants the IDS to be considered, prosecution must be re-opened which requires the filing of an RCE in accordance with 37 CFR 1.114(a).

The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ori Nadav whose telephone number is 571-272-1660. The examiner can normally be reached between the hours of 7 AM to 4 PM (Eastern Standard Time) Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Gurley can be reached on 571-272-1670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

O.N.  
12/10/2009

/ORI NADAV/  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 2800